

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

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R&J TECHNICAL SERVICES, INC.,) Case No. 1:10CV00040 DS

Plaintiff,)

vs.) MEMORANDUM DECISION
AND ORDER

CHRIS KAMPH ET AL.,)

Defendants.)

* * * * *

Defendant Drilling Services International, Inc. removed this case to federal court on the basis of diversity of citizenship of the parties under 28 U.S.C. § 1332. Plaintiff has moved to remand the matter to state court claiming that because both it and Defendant Jason Haymond are citizens of Utah there is not complete diversity and, therefore, no subject matter jurisdiction in federal court.

In support of its motion, Plaintiff asserts that Mr. Haymond's last know address was in Springville, Utah, where he was personally served on April 12, 2010. Citing a skip trace search, Plaintiff also asserts that Mr. Haymond has had one or more telephone numbers and vehicles associated with the Springville, Utah address.

In opposition to the motion, Mr. Haymond has filed his affidavit wherein he avers that the last time that he lived in Utah was approximately 2000 or 2001. He further states that he moved to Pennsylvania in September of 2009, with the intention of staying

there indefinitely. In December of 2009, to accommodate the needs of his employer, he moved from Pennsylvania to North Dakota. Although he acknowledges being served with a Summons and Complaint while visiting his son and mother in Springville, Utah, he states that it was not his intention to stay and indefinitely reside in Utah. He states that he currently is employed and resides in North Dakota.

"For purposes of federal diversity jurisdiction, an individual's state citizenship is equivalent to domicile. ... To establish domicile in a particular state, a person must be physically present in the state and intend to remain there." *Smith v. Cummings*, 445 F. 3d 1254, 1259-60 (10th Cir. 2006) (citations omitted). Based on the foregoing facts of record, the Court concludes for purposes of the present motion that Mr. Haymond has established that he was not a citizen of Utah at the time of the filing of the original complaint and that he continues to maintain his domicile outside of Utah. Because there appears to be complete diversity in this case, Plaintiff's Motion to Remand (Doc. #5) is denied.

IT IS SO ORDERED.

DATED this 27th day of May, 2010.

BY THE COURT:

A handwritten signature in black ink, appearing to read "David Sam", is written over a horizontal line.

DAVID SAM
SENIOR JUDGE
UNITED STATES DISTRICT COURT

